IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS 126 AND 127 OF 1999.

WRIT PETITION NO.126 OF 1999

Shri Sada X. Raut Dessai,
Office of the A.S.W., W.D. IX
(PHE), Public Works Department,
Fatorda, Margao. ... Petitioner.

Versus

1. State of Goa through its Chief Secretary, Secretariat, Panaji.
2. Goa Public Service Commission through its Secretary, EDC House, Panaji.
3. The Chief Engineer & Ex-Officio Additional Secretary, P.W.D., Altinho, Panaji.
4. Shri M.H. Raichurkar, Division I (Bldgs.), P.W.D., Panaji.
5. Shri Sharad V. Naik, Sub-Division III, Div. XII (PHE-SWSP), P.W.D., Sanguem.
6. Shri Venkanna Desai, Sub Division I, Div. XXV (Roads), P.W.D., Canacona.
7. Shri G.R. Raman, Circle V, (PHE North), P.W.D., Altinho, Panaji.
8. Shri Anil V. Vernekar, Sub-Division III, Division II (Roads), P.W.D., Panaji.
9. Shri G.R. Babshet, Sub-Division II, Division II (Roads), P.W.D., Panaji.
10. Shri M.V. Gaonkar, Sub-Division IV, Division XXIII (Roads), P.W.D. Sanquelim.
11. Shri M. Lokesh, Sub-Division II, Division I (Bldgs.), P.W.D. Porvorim.
12. Shri S.P. Jadhav, Sub-Division III, Division III (PHE), P.W.D., Panaji.
13. Shri V.V. Joglekar, Division XVII (PHE-North), P.W.D., Porvorim.

14. Shri P.G. Phutancar,
    Sub-Division VI,
    Division XVII (PHE-North), P.W.D.,

    Valpoi.
15. Shri B.A. Chowgle, Sub-Division I,
    Division XVII, P.W.D., Bicholim.
16. Shri S, Ramachandran,
    Sub-Division III, Division
    VII (NH), P.W.D., Panaji.
17. Shri G.D. Shetty, Sub-Division
    III, Division VIII (Bldgs.
    South), P.W.D., Canacona.
18. Shri P.A. Samant, Division
    XIV (NH), P.W.D., Margao.
19. Shri Milagres Cardozo, Sub-
    Division II, Division XXIV
    (PHE Salaulim South),
    P.W.D., Margao.
20. Shri P. S. Kudalkar,
    Division XXIV (PHE-Salaulim
    South), P.W.D., Margao.
21. Shri S. R. Mangueshkar,
    Sub-Division IV, Division
    XI (Q & C), P.W.D.,
    Panaji.
22. Shri N. G. Hegde, Sub-Division
    I, Division XII (PHE-SWSP),
    P.W.D., Quepem.
23. Shri J. H. Kamble, Sub-Division
    IV, Division I (Bldgs),
    P.W.D., Panaji.
24. Shri B. S. Kharade, Sub-Division
    IV, Division XX (PHE-South),
    P.W.D., Canacona.
25. Shri P. P. Raikar, Sub-Division
    IV, Division VI (Roads),
    P.W.D., Margao.
26. Shri D. S. Gaonkar, Sub-Division
    III, Division XVII
    (PHE-North), P.W.D.,
    Mapusa.
27. Shri Satish Tirodkar, Sub-
    Division I, Division I
    (Bldgs), P.W.D.,
    Panaji.
28. Shri C. A. Josseph, Sub-
    Division I, Division XVIII (Roads)
    P.W.D., Ponda.
29. Shri A. N. V. Achutha Rao,
    Circle III (Roads-North),
    P.W.D., Panaji.
30. Shri P. V. Sasidharan,
    Sub-Division I, Division VII
    (NH), P.W.D., Panaji.

31. Shri E. K. Jayanthan, Sub-Division III, Division XIX (Bldgs. CMS Complex), P.W.D., Bambolim.
32. Shri B. S. Jagannath, Division VIII (Bldgs-South), P.W.D., Margao.
33. Shri A. Venkateshwarlu, Sub-Division II, Division XIV (NH), P.W.D., Margao.
34. Shri Telu Tata Rao, Sub-Division III, Division XXIII (Roads), P.W.D., Bicholim.
35. Shri C. R. Gururajan, Sub-Division II, Division XVI (Bldgs-C), P.W.D., Quepem.
36. Shri B. Koteshwar Rao, Circle I (Bldgs), P.W.D., Altinho, Panaji.
37. Shri A. K. Mony, office of S.S.W., P.W.D., Panaji.
38. Shri K. R. Nair, office of S.S.W., P.W.D., Panaji. ... Respondents.

WRIT PETITION NO. 127 OF 1999.

Shri K. M. Issac,
Junior Engineer, Sub Div. IV,
Works, Division VIII,
Public Works Dept.,
Vasco-da-Gama, Goa. ... Petitioner.

Versus

1. State of Goa through its Chief Secretary, Secretariat, Panaji.
2. Goa Public Service Commission through its Secretary, EDC House, Panaji.
3. The Chief Engineer & Ex-Officio Additional Secretary, P.W.D., Altinho, Panaji.
4. Shri M.H. Raichurkar, Division I (Bldgs.), P.W.D., Panaji.
5. Shri Sharad V. Naik, Sub-Division III, Div. XII (PHE-SWSP), P.W.D., Sanguem.
6. Shri Venkanna Desai, Sub Division I, Div. XXV

(Roads), P.W.D., Canacona.
7. Shri G.R. Raman, Circle V, (PHE North), P.W.D., Altinho, Panaji.
8. Shri Anil V. Vernekar, Sub-Division III, Division II (Roads), P.W.D., Panaji.
9. Shri G.R. Babshet, Sub-Division II, Division II (Roads), P.W.D., Panaji.
10. Shri M.V. Gaonkar, Sub-Division IV, Division XXIII (Roads), P.W.D. Sanquelim.
11. Shri M. Lokesh, Sub-Division II, Division I (Bldgs.), P.W.D. Porvorim.
12. Shri S.P. Jadhav, Sub-Division III, Division III (PHE), P.W.D., Panaji.
13. Shri V.V. Joglekar, Division XVII (PHE-North), P.W.D., Porvorim.
14. Shri P.G. Phutancar, Sub-Division VI, Division XVII (PHE-North), P.W.D., Valpoi.
15. Shri B.A. Chowgle, Sub-DivisionI, Division XVII, P.W.D., Bicholim.
16. Shri S, Ramachandran, Sub-Division III, Division VII (NH), P.W.D., Panaji.
17. Shri G.D. Shetty, Sub-Division III, Division VIII (Bldgs. South), P.W.D., Canacona.
18. Shri P.A. Samant, Division XIV (NH), P.W.D., Margao.
19. Shri Milagres Cardozo, Sub-Division II, Division XXIV (PHE Salaulim South), P.W.D., Margao.
20. Shri P. S. Kudalkar, Division XXIV (PHE-Salaulim South), P.W.D., Margao.
21. Shri S. R. Mangueshkar, Sub-Division IV, Division XI (Q & C), P.W.D., Panaji.
22. Shri N. G. Hegde, Sub-Division I, Division XII (PHE-SWSP), P.W.D., Quepem.
23. Shri J. H. Kamble, Sub-Division IV, Division I (Bldgs), P.W.D., Panaji.
24. Shri B. S. Kharade, Sub-Division

IV, Division XX (PHE-South), P.W.D., Canacona.
25. Shri P. P. Raikar, Sub-Division IV, Division VI (Roads), P.W.D., Margao.
26. Shri D. S. Gaonkar, Sub-Division III, Division XVII (PHE-North), P.W.D., Mapusa.
27. Shri Satish Tirodkar, Sub-Division I, Division I (Bldgs), P.W.D., Panaji.
28. Shri C. A. Josseph, Sub-Division I, Division XVIII (Roads) P.W.D., Ponda.
29. Shri A. N. V. Achutha Rao, Circle III (Roads-North), P.W.D., Panaji.
30. Shri P. V. Sasidharan, Sub-Division I, Division VII (NH), P.W.D., Panaji.
31. Shri E. K. Jayanthan, Sub-Division III, Division XIX (Bldgs. CMS Complex), P.W.D., Bambolim.
32. Shri B. S. Jagannath, Division VIII (Bldgs-South), P.W.D., Margao.
33. Shri A. Venkateshwarlu, Sub-Division II, Division XIV (NH), P.W.D., Margao.
34. Shri Telu Tata Rao, Sub-Division III, Division XXIII (Roads), P.W.D., Bicholim.
35. Shri C. R. Gururajan, Sub-Division II, Division XVI (Bldgs-C), P.W.D., Quepem.
36. Shri B. Koteshwar Rao, Circle I (Bldgs), P.W.D., Altinho, Panaji.
37. Shri A. K. Mony, office of S.S.W., P.W.D., Panaji.
38. Shri K. R. Nair, office of S.S.W., P.W.D., Panaji. ... Respondents

Mr. M.S. Sonak, Advocate for the Petitioner in both Petitions.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondent No. 1 in both petitions.

Mr. A.N.S. Nadkarni with Mr. H.D. Naik, Advocates for the Respondent No. 2 in both petitions.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 12th August 2003.

ORAL JUDGMENT (PER REBELLO, J.)

The petitioners in both the petitions, at the time of filing the petitions, were holding the post of Junior Engineer in the office of the respondent no. 3. The present petitions by them are in the matter of selection to the promotional post of Assistant Engineer. A few facts necessary may be set out, considering what is in issue in these petitions. The main challenge by the petitioners, in both the petitions, is that the respondent no. 1 dereserved vacancies meant for reserved category in the year 1998 and considered those vacancies as available in that year, thereby extending the zone of consideration and consequently the respondents, who, otherwise, would not be eligible, if the vacancies had been dereserved after the expiry of three years, became eligible and found place in the zone of consideration. It is submitted that the respondent no. 2 ought to have considered the vacancies as available on the expiry of three years and not in the year 1998.

2. On behalf of the respondents, the Public Service Commission, an affidavit was filed by D.M. Borkar Under Secretary to the Goa Public Service Commission. It is pointed out that promotion was done considering the Recruitment Rules of the year 1988. Under the earlier Recruitment Rules reservation was 50% by promotion failing which by direct recruitment and 50% by direct recruitment. Pursuant to Rules of 1988, appointment by promotion was to the extent of 75% and by direct recruitment by 25%. The yearwise vacancies are then set out in paragraph 9 of the reply. It is pointed out that the petitioners were not eligible for being considered for the vacancies which arose in the years 1985-1997. They were considered for the year 1998. Those selected were found better and, accordingly, the petitioners were not selected. On behalf of respondents 1 and 3, an affidavit was filed by S. Rajagopalan. In his affidavit, it is pointed out that the dereserved vacancies were considered in the year 1998. It is also set out that it is only after the vacancies were dereserved that the vacancies became available for the general category.

3. With the above, the contentions as raised before this Court may be considered. A vacancy would arise when the vacancy becomes available. In the instant case, the vacancies were reserved for S.C./S.T.

candidates and, therefore, open candidates were not eligible for being considered against those vacancies. It is also not incumbent on the respondent State to denotify vacancies but it can do so. The respondent State, therefore, took the step to denotify the vacancies in the year 1998 on the expiry of three years when candidates of the reserved category of S.C./S.T. were not available. That would not mean that the vacancy becomes available on the expiry of three years. That vacancy would become available only after the Committee meets and takes a decision to dereserve the vacancies. This happened in the year 1998. Once that happened, it is only in the year 1998 that the vacancies would be available to be filled in by open candidates. Support for this view can be found in the observations of the Apex Court in the case of **Harish Chandra Ram v. Mukh Ram Dubey and others,** 1994 Supp (2) S.C.C. 490. There the Apex Court was considering as to what would be the recruitment year. In that context, the Apex Court observed that dereservation would be considered only at the end of the third recruitment year provided reserved candidates are not available, or considered at the recruitment and found not fit for promotion or the vacancy is carried forward for three successive recruitment years. Then the matter should be placed before the competent authority for consideration for dereservation of the reserved posts and a resolution or order should be made dereserving the posts. Only then,

those reserved posts or vacancies will be thrown open for recruitment by the general candidates. That being the case, it is only on the Order being passed in the year 1998 that the seats could be open to be filled in by general candidates. This was the only point raised in these petitions. In the light of that we find no merit in the petitions. Rule discharged with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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